

## **FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Legislation	Patricia Lee 386-0078	

### **Legislation Title:**

AN ORDINANCE seeking to increase public safety and job assistance through reducing criminal recidivism and enhancing positive reentries to society by prohibiting certain adverse employment actions against individuals who have been arrested, convicted, or charged with a crime.

### **Summary of the Legislation:**

This ordinance proscribes when and what criminal history can be considered in making employment decisions. The intent of this ordinance is to facilitate the employment of individuals with a criminal history while also recognizing an employer's legitimate interest in protecting people, property and their business reputation.

An applicant's criminal history can be obtained and considered only after a conditional job offer is made.

An employer shall not discharge, refuse to hire or carry out a tangible adverse employment action because of

- a) An employee's or applicant's arrest record or
- b) an employee or applicant's criminal conviction record, unless (i) there is a direct relationship between the conviction and the employment sought or held; or
- c) a pending criminal charge against an applicant or employee, unless there is a direct relationship between the circumstances of the pending criminal charge and the employment sought or held.

A direct relationship exists where the nature of the criminal conduct underlying the conviction or the pending criminal charge has a direct bearing or connection to the employee's or applicant's fitness or ability to perform the position sought or held; or where it is reasonably foreseeable that employing the applicant or employee will result in harm or injury to persons or property. In determining direct relationship, employers should consider factors such as the seriousness of the underlying criminal conviction or pending criminal charge; the number and types of convictions or pending criminal charges; how much time has elapsed since the conviction or pending criminal charge, excluding periods of incarceration; any verifiable information related to the individual's rehabilitation or good conduct; the specific duties and responsibilities of the position sought or held; and the employer's legitimate interest in protecting people, property, and its business reputation.

Exceptions exist to the above requirements. These requirements do not apply to employers who a) provide services to minors or vulnerable populations, b) law enforcement, or) employers who are required by federal or state law to inquire, consider or rely on an applicant's criminal history in making employment decisions. In addition, employers may disqualify from employment an applicant or employee whose criminal history includes embezzlement, theft, fraud or any other financial crime from employment in a position involving access to money, financial information, or personal identifying information of customers, employees, or members of the public.

Similar to legislation governing Washington State and City of Seattle employees this legislation neither requires the hiring of an individual nor permits a blanket exclusion of all applicants with a criminal history but requires an individualized consideration of the applicant's fitness for a particular job.

### **Background:**

Persons entering society after incarceration often find that their criminal records prevent them from obtaining employment. This prevents them from finding a legitimate way to support themselves and their families, interferes with their rehabilitation and contributes to criminal recidivism with resultant negative impacts on their lives, their families and the public.

In Washington State, as in the United States generally, the number of persons incarcerated in jail and prison has increased dramatically. In 2009 17,0000 people were released from prisons in Washington State and nearly 730,000 people were released from Federal and State prisons across the country. The incarceration rate for certain populations is disproportionately high. While African Americans are 3.6% of Washington's population they are nearly 19% of the state's prison population and Native Americans who are 1.5% of the state population are 4.3% of the state prison population.

The Equal Employment Opportunity Commission has found that because of these disparate incarceration rates blanket exclusions from employment of all individual's with a criminal history may have a disparate impact on protected classes and may violate Title VII. Several states and municipalities have enacted various job application protections facilitating consideration for employment of individuals with a criminal history.

### **X This legislation does not have any financial implications.**

(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

### **Other Implications:**

#### **a) Does the legislation have indirect financial implications, or long-term implications?**

The Office of Civil Rights (OCR) will implement this legislation. OCR will need to assess their ability to continue to absorb this body of work with existing staff and resources

**b) What is the financial cost of not implementing the legislation?**

There are indirect public safety and human services costs to the City by failing to facilitate the employment of individuals with a criminal history.

**c) Does this legislation affect any departments besides the originating department?**

OCR will implement this legislation.

**d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

**e) Is a public hearing required for this legislation?**

No

**f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No.

**g) Does this legislation affect a piece of property?**

No

**h) Other Issues:**

**List attachments to the fiscal note below:**

None